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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
TIRSO GARCIA-VALDEZ, MISAEL  
GARCIA CARRANZA, AND BRENDA  
CARMONA-VENEGAS,  
  
Defendants.

CASE NO. 1:20-CR-00044-DAD-BAM

STIPULATION REGARDING STATUS  
CONFERENCE REGARDING DEFENDANTS  
TIRSO GARCIA-VALDEZ AND MISAEL  
GARCIA CARRANZA; AND ORDER

DATE: August 24, 2022

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

**BACKGROUND**

This case is set for status conference on August 24, 2022, jury trial on February 7, 2023, and Trial Confirmation Hearing on January 9, 2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to

1 address public health concerns related to COVID-19.

2 Although the General Orders address the district-wide health concern, the Supreme Court has  
3 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
4 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
5 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
6 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
7 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
8 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
9 or in writing”).

10 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
11 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
12 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
13 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
14 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
15 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
16 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
17 and the defendant in a speedy trial.” *Id.*

18 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
19 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
20 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
21 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
22 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
23 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
24 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
25 following the September 11, 2001 terrorist attacks and the resultant public emergency).

26 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
27 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
28 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act

continuanes “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

### STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant TIRSO GARCIA-VALDEZ, by and through defendant’s counsel of record, David A. Torres, and defendant MISAEEL GARCIA-CARRANZA, by and through defendant’s counsel of record, Roger Wilson, hereby stipulate as follows:

1. By previous order, this matter was set for status conference on August 24, 2022.
2. By this stipulation, defendants now move to continue the status conference until November 9, 2022. Time is currently excluded through the jury trial date of February 7, 2023. *See* Doc. No. 65.
3. The parties agree and stipulate, and request that the Court find the following:
  - a) The government has represented that the discovery associated with this case includes over 60 audio and video recordings and over 1,000 pages of Bates stamped discovery. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.
  - b) Counsel for defendants desire additional time to consult with their clients, to

review the current charges, to conduct investigation and research related to the charges, to review and copy discovery for this matter, to discuss potential resolutions with their clients, to prepare pretrial motions, and to otherwise prepare for trial.

c) Counsel for defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance or the dates for jury trial and trial confirmation.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: August 18, 2022

PHILLIP A. TALBERT  
United States Attorney

/s/ LAURA JEAN BERGER  
LAURA JEAN BERGER  
Assistant United States Attorney

Dated: August 18, 2022

/s/ DAVID A. TORRES  
DAVID A. TORRES  
Counsel for Defendant  
TIRSO GARCIA-VALDEZ

Dated: August 18, 2022

/s/ ROGER WILSON  
ROGER WILSON  
Counsel for Defendant  
MISAEEL GARCIA-  
CARRANZA

**ORDER**

IT IS SO ORDERED that the status conference is continued from August 24, 2022, to **November 9, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is currently excluded through the jury trial date of February 7, 2023.

IT IS SO ORDERED.

Dated: **August 18, 2022**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE